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Domestic Violence in the Haitian Culture and the American Legal Response: Fanm Ayisyen ki Gen Kouraj

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COMMENTS

Domestic Violence in the Haitian Culture and the American Legal Response: *Fanm Ayisyen ki Gen Kouraj*

Mary Clark*

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Marie's story:

Marie is a thirty-two year old woman, born and raised in the countryside of Haiti. Her mother has six other children, all from different fathers. Marie has never met her biological father, as he abandoned her and her mother before her birth. As a teenager, Marie was forced to stay home to help her mother in the home. As a result, Marie was forced to quit school, leaving her with only an

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elementary school education. One day, her mother was approached by an older man from Port-au-Prince who was in their village visiting family. The man had noticed Marie and asked her mother's permission to take Marie back to Port-au-Prince with him. Marie's mother agreed. She had recently been left by one of the children's fathers. She had no money. With Marie gone, she had one less mouth to feed.

Once in Port-au-Prince, Marie began a sexual relationship with the older man. They were never formally married, but lived together as man and wife. Soon, Marie had the man's children. He regularly beat her out of anger, frustration, or to discipline her. They lived together in Port-au-Prince for many years.

One night, while Marie's family slept, a gang of robbers broke into their home in Port-au-Prince. The robbers tied up her husband and raped Marie and her young female children. Emotionally devastated from the event, her husband chose to move the family to the United States, where he was a citizen.

Marie's husband has continued to abuse her in the United States and has started to hit the older children as well. Marie does not speak or read English and has no knowledge of American laws. She feels lost in this new country and does not know where to turn for help.

I. INTRODUCTION

Marie's story is the story of many Haitian women in the United States. The pervasive violence in Haitian culture often victimizes the most powerless members of society: women and children.¹ This comment addresses the severe problem of domestic violence against Haitian women in both the United States and Haiti. It will begin by discussing the history of Haiti and how its laws and culture foster the abuse. Then, the comment will discuss how the laws of the United States can serve as an advocacy tool for Haitian immigrants, like Marie, who are the victims of domestic violence. The comment argues that community grass roots efforts, in Haiti and the United States, can be instrumental in educating and empowering these women. While domestic violence

1. See generally Anastasia Gage, *Women's Experience of Intimate Partner Violence in Haiti*, 61 SOC. SCI. & MED. 343 (2005); Michele Wucker, *Haiti: So Many Missteps*, 21 WORLD POL'Y J. 41 (2004).

laws in Haiti are non-existent, the laws in the United States are not being used to their full potential. By reaching out to communities, advocates can give effect to the protection available through these underutilized U.S. laws.

II. HISTORY OF HAITIAN SOCIETY AND CULTURE

By examining the political and social background of Haiti, it becomes easier to understand the underlying problems that have resulted in violence against women and children in this society. Haiti is the poorest and least industrialized country in the Western Hemisphere.² Over 60% of the population lives in "extreme poverty,"³ the majority of whom are completely beyond the reach of the government or any of its services.⁴ Unemployment is approximately 70% and about 50% of adults cannot read or write.⁵ The effect of extreme poverty is particularly detrimental to children: 42% of those below age five are malnourished and easily preventable medical issues like malnutrition and diarrhea kill 28% and 20% of children from birth to age five, respectively.⁶

In addition, Haiti is currently an extremely violent society. The worsening state of the economy, the decrease in international aid, widespread corruption and the terror of government-armed street gangs all have created an overwhelming level of hostility in the country.⁷ In order to truly understand the current crisis in Haiti, it must be examined in the context of the nation's history.

2. Gage, *supra* note 1, at 346.

3. *Id.* In terms of annual per capita income, the indigence line in Haiti was estimated at around US\$160 and the poverty line at US\$220. 2 POVERTY REDUCTION AND ECONOMIC MANAGEMENT UNIT, WORLD BANK, HAITI: THE CHALLENGES OF POVERTY REDUCTION 4 (1998) [hereinafter CHALLENGES OF POVERTY REDUCTION]. In contrast, the official poverty rate in the United States was 12.7% in 2004, when a family with two children under age eighteen that made under \$19,157 was considered below the poverty line. CARMEN DENAVAS-WALT ET. AL., U.S. Census Bureau, Income, Poverty, and Health Insurance Coverage in the United States: 2004 9, 45 (2005).

4. *E.g.*, Press Release, United Nations Development Programme, Millennium Development Goals Look Out of Reach for Increasingly Impoverished Haiti, Concludes Detailed Report by the UN and Interim Government (Nov. 17, 2004) (on file with author), available at <http://www.undp.org/dpa/pressrelease/releases/2004/november/haitirelease.pdf> [hereinafter Millennium Development Goals] (stating that 80% of Haitian women still give birth outside the healthcare system and 19% of all pregnant women never see pre-natal care).

5. Gage, *supra* note 1, at 346. In contrast, it was estimated that only about 1% of adults in the United States were illiterate between 2000 and 2004. UNESCO Institute for Statistics, *Statistics in Brief: Education in United States*, Oct. 2005, http://www.uis.unesco.org/profiles/EN/EDU/countryProfile_en.aspx?code=8400.

6. Millennium Development Goals, *supra* note 4.

7. Gage, *supra* note 1, at 346.

A. *Haitian Colonial History*

The island of Hispanola, now the nations of Haiti and the Dominican Republic, was “discovered” by Christopher Columbus in 1492.⁸ The land was occupied by a native people called the “Tainos,” who were ultimately crushed by Spanish imperialism.⁹ The Spanish colonial period was soon replaced by cruel French colonial rule.¹⁰ “Subsequent French rulers of Haiti . . . shipped in hundreds of thousands of African slaves to work their sugar plantations.”¹¹ The exploitation of the native and African populations led to the Haitian Revolution of 1791-1803.

The history of Haitian women begins in the context of the European imperialism. Most French colonialists left their wives and daughters in France upon immigrating to colonial Haiti, Saint Domingue.¹² The Frenchmen established households with colonial women, who were mostly Caribbean-born women of mixed European and African heritage.¹³ During the colonial period, women of color “were thought to have particular sexual power over white men since the whites lived openly with these women and acknowledged paternity of their children.”¹⁴ By the end of the 18th century, the sons of these free women of color married the daughters of other free women of color creating a new generation of wealthy free families of color.¹⁵ After the second and third generation of mixed ancestry, the sons took over the holdings of their mothers.¹⁶ It was these sons who joined with the African slave population to overthrow the French colonial rule.¹⁷ They also created a society in which their mothers, and women in general, were treated as second-class citizens and thrown to the “bottom [rung] of the economic and social ladder.”¹⁸

8. Anup Shah, *Human Rights for All: Haiti and Human Rights*, GLOBAL ISSUES, June 19, 2004, <http://www.globalissues.org/HumanRights/Abuses/Haiti.asp>.

9. *Id.* (quoting David Cromwell & David Edwards, *Media Alert: Bringing Hell to Haiti - Part 1*, MEDIA LENS, March 1, 2004, http://www.medialens.org/alerts/04/040301_Hell_Haiti_1.html).

10. *Id.*

11. *Id.* (quoting Cromwell & Edwards, *supra* note 9).

12. Walter J. Pierce & Erlange Elisme, *Suffering, Surviving, Succeeding: Understanding and Working with Haitian Women*, RACE, GENDER & CLASS, Oct. 31, 2000, at 60, 60.

13. *Id.*

14. *Id.* (internal citation omitted).

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.* “From the inception of the Haitian republic, women were systematically discriminated against as members of the society. In the transition from slavery to

B. *The Haitian Revolution and the Modern Era*

Due to the ancestry and makeup of the colonial population of Haiti, the French Revolution of 1789 was extremely influential on the Haitian revolution.¹⁹ Toussaint L'Ouverture led the twelve year slave rebellion against French oppression to establish Haiti as the first independent black republic.²⁰ After the slaves won the rebellion, France, backed by the United States, ordered Haiti to pay reparations for the costs of war as well as to compensate former plantation and slave owners in return for international recognition.²¹ By the end of the 19th century, 80% of Haiti's national budget was appropriated towards paying off these reparations with interest.²² These debts resulted in economic impoverishment, military siege, and international isolation.²³ Consequently, the United States invaded the country from 1915 to 1934, fearing that "internal strife" would compromise its interests.²⁴

Following World War II, the United States supported the dictator Francois Duvalier, who declared himself president of Haiti for life.²⁵ "Sexual violence, often in plain view of family members, was used as an instrument of political repression during Duvalier's regime."²⁶ Following his death in 1971, his nineteen-year-old son, Jean-Claude Duvalier, succeeded him.²⁷ After a revolt in 1983, Duvalier was escorted out of Haiti on a U.S. Air Force jet.²⁸

In 1990, Haiti elected a poor Roman Catholic priest, Jean-

nationhood, former slaves participated in a semi-wage, semi-share-cropping system in which women received 2/3 wages of the men. Female protests of the system were put down after direct appeals to the maleness of the former male slaves. Later in the nation's history, each of the many constitutions written and published between 1801 and 1950 kept women in subordinate positions. For example, until 1979 married women, under Haitian law, were legally minors and were subject to and accountable to their husbands." *Id.* (internal citation omitted).

19. Shah, *supra* note 8.

20. Gary Younge, *Throttled by History: Haiti's Political Class Has Failed it, but the First Black Republic Has Also Been Squeezed Dry by a Vengeful West*, THE GUARDIAN (London), February 23, 2004, at 15, 15.

21. *Id.*

22. *Id.*

23. *Id.* (illustrating Haiti's international isolation with the United States refusal to acknowledge Haiti's existence for fifty-eight years).

24. *Id.*

25. Erich Marquardt, *Haiti's Experiment with Democracy Subverted Once Again*, POWER AND INTER. NEWS REP., March 4, 2004, http://www.pinr.com/report.php?ac=view_report&report_id=148.

26. Gage, *supra* note 1, at 346.

27. Marquardt, *supra* note 25.

28. *Id.*

Bertrand Aristide, in its first true election.²⁹ Aristide was subsequently overthrown less than a year after taking office in a "military coup orchestrated by the country's economic and military elite."³⁰ For the next three years, 1991-1994, Haiti suffered from civil violence as the new regime "massacred potential political opponents in the streets."³¹ This terror forced many Haitians to flee the country as refugees.³²

In response to the refugee problem in the United States, the U.S. government helped restore the democratically elected Aristide back to power in 1994.³³ However, the conditions of his return undermined his ability to govern effectively. His failure to bring human rights violators to trial contributed to his problems in the early 2000s.³⁴ When Aristide reclaimed his power, he disbanded the Haitian army.³⁵ This decision sparked anger among many of the country's former soldiers, as their livelihood and source of income were destroyed.³⁶ Moreover, Aristide was accused of fixing the 2000 nationwide elections, which resulted in the United States withholding aid.³⁷ In February, 2004, the rebel militia captured more and more territory in Haiti until it eventually took over the capital of Port-au-Prince and removed Aristide from power.³⁸ Aristide claimed that the United States and France were behind his exile.³⁹

29. *Id.*

30. Shah, *supra* note 8.

31. Marquardt, *supra* note 25; see also Terry Rey, *Junta, Rape, and Religion in Haiti 1993 - 1994*, J. OF FEMINIST STUD. IN RELIGION, Fall 1999, at 73, 79 ("[A]ccording to a 1990 study of the scope of sexual violence in Haiti, the first sexual experience of nearly one in three Haitian women transpires against her will.").

32. Marquardt, *supra* note 25.

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. U.S. Central Intelligence Agency, *The World Factbook: Haiti*, Jan. 10, 2006, <http://www.cia.gov/cia/publications/factbook/geos/ha.html>.

38. Elliott C. McLaughlin, *Aristide Tells AP the U.S. Forced Him Out*, ASSOCIATED PRESS, March 1, 2004, available at <http://www.washingtonpost.com/wp-dyn/articles/A21115-2004Mar1.html?nav=headlines>; see also Jim Lobe, *True Reactionaries*, INTER PRESS SERVICE, March 12, 2004, available at <http://www.ipsnews.net/interna.asp?idnews=22832> ("The fact that Toussaint L'Ouverture, the leader of the Haitian fight for independence, was also captured by France and exiled to the Jura Mountains near the Swiss border, just as Aristide was taken to the remotest part of Africa, only added to the imperial nostalgia surrounding the episode.").

39. McLaughlin, *supra* note 38; see also Lobe, *supra* note 38 ("Paris' complicity was based in part on its eagerness to be rid of a pesky leader who had the audacity to demand it compensate Haiti for the money it was forced to pay in exchange for French recognition of its independence almost 200 years ago.").

C. *Women's Efforts in the Modern Era*

The Women of Haiti have attempted peace-building activities to counteract the omnipresent violence in this society. "Two months after the fall of Duvalier in 1986, 30,000 Haitian women marched in the streets of Port-au-Prince in a peaceful protest to remind the country's new leaders of women's right[s]" ⁴⁰ A number of widows whose husbands were killed during the coup of 1991 "joined together to form a drama troupe that travels the country raising awareness about peace and reconciliation." ⁴¹ One of their performances, entitled "Salute to a Forgotten Woman," "deals with the plight of war widows in poverty-stricken Haiti." ⁴² Despite these efforts, most women of Haiti continue to deal with violence daily; not only from opposition to the government, but also within their own homes.

Haitian women's interest in reducing the violence in there culture and increasing their role in Haitian society is directly related to the elimination of violence in her home. The chaos in the government, economy, and on the streets sets the backdrop of a life with limited choices and opportunities for these women. The progression of women's rights around the world has not been felt in Haiti, which remains a deeply misogynistic society. ⁴³

Haitian culture holds a deeply patriarchal belief that women should only concern themselves with domestic work and child-care. ⁴⁴ Haitian women have little to no representation in their government. ⁴⁵ There are only three women in the eighty seat Haitian parliament and of the 127 mayors of Haitian cities and towns, only six are women. ⁴⁶ This lack of representation results in unequal treatment under the law. For example, the Criminal Code of Haiti "excuses a husband who kills his wife or her partner upon catching them in the act of adultery in his home, but a wife who kills her husband under similar circumstances is not excused." ⁴⁷

40. WomenWarPeace.org, *Haiti - Country Page, Women's Peace-Building Activities in Haiti*, <http://www.womenwarpeace.org/haiti/haiti.htm>.

41. *Id.*

42. *Id.*

43. See Shelley Wiley, *A Grassroots Religious Response to Domestic Violence in Haiti*, J. OF RELIGION & ABUSE, Nov. 12, 2003, at 23, 31; Pierce & Elisme, *supra* note 12, at 63.

44. Pierce & Elisme, *supra* note 12, at 63.

45. *Id.*

46. *Id.*

47. BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEPT. OF STATE, HAITI, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES - 2004 (2005), <http://www.state.gov/g/drl/rls/hrrpt/2004/41764.htm>.

This lack of equality results in Haitian women having a lower economic status than men, as tradition limits women's roles in some social strata.⁴⁸ This lack of progress hinders the struggle against domestic violence, as the women of Haiti do not have the power to make the act illegal.⁴⁹

III. DOMESTIC VIOLENCE IN HAITI

The political and social history of Haiti gives the context for the violence women like Marie experience in this society. An investigation by the *Centre Haïtien des Recherches et d'Actions pour la Promotion Féminine* "revealed that seven out of ten women interviewed reported having been victims of violence, with the most common form (37%) being sexual violence . . ."⁵⁰ It was also reported that approximately half of these abusers "were husbands or boyfriends."⁵¹ In addition, about one-third of those surveyed "reported that they had been victims of physical violence."⁵²

This pervasive and systemic domestic violence in Haitian society can be attributed to many factors. Evidence gathered by women's groups and other human rights organizations documents the reality that Haitian women are treated as property.⁵³ Moreover, Haitian women are not adequately represented in the nation's governing bodies.⁵⁴ This reflects the common belief in Haiti that the woman's place is defined by the home and the family.⁵⁵

A. Male/Female Relations in Haiti

Relationships in Haiti range from traditional church and government-sanctioned marriage to what is called *plasaj*, or common law marriage.⁵⁶ Only a minority of Haitian couples are legally married.⁵⁷ The rights of women in *plasaj* are not recognized.⁵⁸

48. *Id.* (explaining that a majority of poor women in both rural and urban areas remain in traditional occupations of farming, marketing, and domestic labor).

49. *Id.*

50. Gage, *supra* note 1, at 346.

51. *Id.*

52. *Id.*

53. Wiley, *supra* note 43, at 25.

54. Pierce & Elisme, *supra* note 12, at 68.

55. *Id.* at 63.

56. *Id.*

57. *Id.*

58. Anne Fuller, *Challenging Violence: Haitian Women Unite Women's Rights and Human Rights*, in No. 55/56, ASSOCIATION OF CONCERNED AFRICA SCHOLARS, BULLETIN: WOMEN AND WAR 39, 40, 79 (1999), available at <http://www.prairienet.org/acas/bulletin/acasbulletin55.pdf>.

Although both men and women may have series of such relationships during their lifetimes, men commonly have several such relationships during the same time period.⁵⁹ In most cases, it is the responsibility of the man to provide for the family.⁶⁰ If the man has several families through *plasaj*, he is to provide for each.⁶¹

Plasaj is more common among the poorer people in Haitian society.⁶² Women do not necessarily enter these relationships freely, but rather they are trapped by poverty and illiteracy.⁶³ The story of Acephie, a poor Haitian countryside girl, is exemplary on this point. When Acephie was still in primary school at the age of 19, she began to assist her mother in carrying family produce to a market that was located near a military barracks.⁶⁴ An army officer found her to be attractive, and though he had a wife and children, approached her family about allowing him to establish a *plasaj* relationship with Acephie.⁶⁵ Due to the family's poor economic status, the family gave permission for the soldier to enter into a sexual union with their daughter.⁶⁶ He subsequently infected Acephie with the HIV virus, which is essentially a death sentence in Haiti due to inadequate health care.⁶⁷ This story is all too common, yet it is not only poor women who are victims of the misogynistic Haitian society.

B. Lack of Intervention

Violence against women occurs across all classes in Haiti⁶⁸ and can only be punished under general laws against assault and battery, if at all.⁶⁹ No specific laws against domestic violence exist in Haiti⁷⁰ and most domestic violence cases are never reported to

59. Wiley, *supra* note 43, at 25; see also Fuller, *supra* note 58, at 40-41 ("In a recent survey, 32.5% of men in stable unions also reported having had more than one sexual partner during the previous month.").

60. Wiley, *supra* note 43, at 25.

61. *Id.*

62. *Id.*

63. Pierce & Elisme, *supra* note 12, at 70.

64. *Id.* (citing story told by Paul Farmer, *On Suffering and Structural Violence: A View from Below*, DAEDALUS, 1996, at 261, available at http://www.findarticles.com/pl/articles/mi_qa3671/is_199601/ai_n8753830/print).

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. Fuller, *supra* note 58, at 40.

70. Wiley, *supra* note 43, at 25.

the police.⁷¹ Furthermore, even if an attack *was* reported, it is likely that the attacker would not be prosecuted because of the dominant view that domestic violence is a private family matter.⁷²

The political violence in Haiti not only sets the stage for violence against women, it detracts attention from the magnitude of the problem.⁷³ Due to the political environment and history of subordination of Haiti, it is extremely difficult for these women to break the cycle of abuse.⁷⁴ This environment contributes to the predictors of emotional, physical and domestic violence against women.⁷⁵ Studies have identified four domains of predictors: individual, relationship, household and community characteristics.⁷⁶ These findings indicate that seven factors consistently increase Haitian women's risk of intimate partner violence, regardless of the form of violence.⁷⁷ These factors include women's lack of completion of primary school, violence in women's family of origin, partner's jealousy, partner's need for power, relationship quality, partner's history of intoxication, and female-dominated financial decision-making.⁷⁸

Haitian society is filled with circumstances that compound women's risk of domestic violence. Studies show that "neighborhood poverty and neighborhood male unemployment were important factors influencing women's risks of experiencing sexual violence"⁷⁹ The theory behind this connection is that men assault women when they lack resources to control women or when unable to live up to their "breadwinner" role.⁸⁰ Considering 70% of adults are unemployed and 60% of the country lives in extreme poverty, women will continue to be at risk for domestic

71. See Fuller, *supra* note 58, at 40 ("Domestic abuse has traditionally been seen as an internal family matter and not penalized."); see generally Gage, *supra* note 1.

72. See, e.g., Wiley, *supra* note 43, at 26 (illustrating the lack of public concern for domestic violence by explaining the new approach muggers take in Haiti: if they are attacking a woman, they will yell at her as though she is a lover or a wife, knowing that if others witness the attack they will assume it is merely a domestic matter and leave the couple alone).

73. See *id.* at 31 (arguing that political violence takes center stage over violence against women).

74. See *supra* Part II.C.

75. Gage, *supra* note 1, at 357.

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.* at 359 (citing Christina A. Byrne, et al., *The Socioeconomic Impact of Interpersonal Violence on Women*, 67 J. OF CONSULTING & CLINICAL PSYCHOL. 362, 366 (1999)).

80. *Id.* at 357.

violence unless political and economic circumstances vastly improve.⁸¹

C. *Consequences of Domestic Violence for Women and Children*

Although the physical consequences of abuse are the most visible, the emotional ramifications of domestic violence will remain with a woman for the rest of her life. Many women, like Marie, become effectively trapped in violent relationships through their psychological adaptation to repeated abuse.

Since the 1970s, a growing body of research has developed to explain this "battered-women syndrome," where victims internalize blame for violence that they cannot prevent.⁸² After cycles of beatings, many women come to perceive themselves as helpless; unable to stop the abuse and fearful to leave their abusive partner behind.⁸³ These psychological inhibitors are compounded by socio-economic factors in Haitian culture, making escape seem hopeless for women like Marie. As a result, women can suffer repeated abuse with nowhere to turn.

Children are often the forgotten victims of domestic violence. Children can be victims of domestic violence both by being assaulted themselves or witnessing what occurs between their parents.⁸⁴ The harmful consequences of domestic violence on children vary and increase in severity according to age.⁸⁵ Moreover, the children's future relationships may reflect violence learned or witnessed in the home, thus repeating the cycle of abuse.⁸⁶

D. *Services for Victims of Domestic Violence in Haiti*

Due to the government's lack of intervention in domestic violence, Haitian women are forced to turn to alternative sources for strength and protection. A number of women's organizations in Haiti have been working to introduce services for women who are

81. See CHALLENGES OF POVERTY REDUCTION, *supra* note 3, and accompanying text.

82. DEBORAH L. RHODE, SPEAKING OF SEX: THE DENIAL OF GENDER INEQUALITY 115 (1997).

83. *Id.*

84. Honorable Jay B. Rosman, *Domestic Violence: Recent Amendments to the Florida Statutes*, 20 NOVA L. REV. 117, 118 (1995).

85. See PETER G. JAFFE ET AL., CHILDREN OF BATTERED WOMEN 18 (1990).

86. Alan J. Tompkins et al., *The Plight of Children Who Witness Woman Battering: Psychological Knowledge and Policy Implications*, 18 L. & PSYCHOL. REV. 137, 146-47 (1994).

victims of domestic violence and politically motivated rape.⁸⁷ Haiti's Truth and Justice Commission, headed by a woman, issued a report in 1996 concerning human rights violations during military rule.⁸⁸ The report documented that the social context in Haiti makes women very vulnerable and little inclined to file complaints, as well as recommended directives to police affirming that sexual aggressions are serious crimes deserving priority treatment in investigations.⁸⁹ These recommendations include: redefining rape as an attack on physical integrity and well-being rather than honor; for acts of domestic violence to be explicitly defined as "forms of physical, moral and/or sexual aggression," and against the law; development of educational programs to improve the treatment of rape victims by police, judges, doctors and others; creation of services and programs for victims; and a campaign to educate and inform the public about rape.⁹⁰

Organizations such as DWA FANM ("Women's Rights" in Haitian Creole), have undertaken an educational campaign against domestic and political violence through workshops on public television and radio, well-known street corners, and at community-based organizations.⁹¹ This movement, called Haitians Against Violence at Home (HAVH), is aimed at helping battered women survive domestic violence by teaching them about their right to safety, advising them on birth control options, explaining ways of protecting themselves from sexually transmitted diseases, and providing opportunities for financial independence.⁹²

While organizations like DWA FANM offer education and outreach to women victims of violence, other organizations like KAY FANM are geared towards service. KAY FANM has a full-time office that works with women victims of violence, receiving complaints of violations and providing medical, legal and psychological assistance.⁹³ Moreover, this organization also serves as the only shelter for battered women in all of Haiti, providing temporary shelter for up to three days.⁹⁴

87. Gage, *supra* note 1, at 360.

88. Fuller, *supra* note 58, at 8.

89. *Id.*

90. *Id.*

91. Gage, *supra* note 1, at 360.

92. *Id.*

93. *Id.*

94. *Id.* (citing Fuller, *supra* note 58).

E. Religion and the Arts Used to Combat Domestic Violence

Another source of strength, protection and resistance from domestic violence can be found in the religions of Haiti. "Religious belief systems are central aspects of Haitian culture."⁹⁵ Although the official religion in Haiti has always been Catholicism, all Haitians understand the cultural aspects of Vodou.⁹⁶ There are grassroots campaigns using the teachings of Vodou to stop the violence in Haitian culture.⁹⁷

Haitian Vodou is a religious tradition that grew in part as a resistance to slavery, with the core understanding that every person has worth and dignity.⁹⁸ Vodouisants acknowledge one creator God who becomes known to people through the spirits, *lwa*, each of whom manifest a different attribute of God or the world.⁹⁹ The teachings of Vodou are centered around relationships where the *lwa* are part of the community through ceremonies in which they possess their devotees.¹⁰⁰ Priests (*Houngan*) and priestesses (*Mambo*) are central to inviting the spirits into the community life and serve as interpreters of spiritual meaning.¹⁰¹ The central belief permeating all of Vodou theology is that God creates all people equal.¹⁰² Women play important roles of expression in Vodou, and serve as spiritual leaders.¹⁰³

The fundamental beliefs in Vodou theology run counter to the misogynist culture in Haiti. The core beliefs that people are created equal are antithetical to domestic violence because violence denies the relationship each individual person has with the spirits and their value within the community.¹⁰⁴ Religious and community leaders are beginning grassroots movements to spread this message throughout Haiti.¹⁰⁵ For example, female spirits in Vodou have begun to tell the stories of women's lives from their point of

95. Pierce & Elisme, *supra* note 12, at 67.

96. *Id.* (citing ALEX STEPICK, PRIDE AGAINST PREJUDICE: HAITIANS IN THE UNITED STATES (1998)).

97. See generally Wiley, *supra* note 43.

98. *Id.* at 27.

99. *Id.* at 26.

100. *Id.*

101. *Id.* at 27.

102. *Id.* (illustrating that Vodou empowers women to a larger extent than most world religions by reflecting the influence of women's role in helping Haitians survive and adapt during and after slavery).

103. *Id.*

104. *Id.*

105. *Id.* at 29.

view, and thus address issues of violence.¹⁰⁶ However, spreading this message is challenging given that Vodou has no governing structure and over half the population of Haiti cannot read or write.¹⁰⁷ Therefore, the impact of individual leaders' rejection of domestic violence has been extremely localized.

Fortunately, activists are discovering creative measures for spreading their beliefs. Violence is condemned in religious art, poetry, liturgy, and teaching.¹⁰⁸ In the rural areas of Haiti, radio is the key form of communication and an excellent avenue for spreading the voice against violence.¹⁰⁹ For example, two popular Haitian bands that incorporate the rhythms and lyrics of Vodou songs into their music have produced songs that explicitly mention the need to stop violence against women and children.¹¹⁰ Although there is no organized movement against domestic violence in Vodou theology, activists are hopeful that these grass-roots efforts will have the power to gain strength and numbers.¹¹¹

IV. HAITIAN WOMEN IN THE UNITED STATES

A. *Family Life*

Women comprise over fifty percent of Haitians who immigrate into the United States.¹¹² Life for these women in America is much different than in Haiti. While the man is still considered the decision-maker in the family, the economic freedom of the woman allows her much more input into the family's activities and use of their income.¹¹³ This increased economic freedom changes the structure of the marriage relationship.¹¹⁴ Scholars have identified four types of male-female relationships. These include: "*mariage de*

106. *Id.* at 30.

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.* (quoting the lyrics of a popular song by the Boukman Ekspertans: "We have been trapped in violence ever since we were kids: Domestic violence, violence in the schools, violence in the media, violence against nature, violence against women and children, too many forms of violence! Too much violence!").

111. *Id.* at 32.

112. Pierce & Elisme, *supra* note 12, at 63.

113. *Id.* (sharing the testimony of a Haitian woman in New York: "In our country, the wife has her head down, because she does not work. She sits, wastes time and gossips. She is forced to live with a man because it is he who gives her food, money, clothes and shoes. Here, things have changed. We have the means to help financially with expenses incurred in the household and with the education of our children. Slavery is over. We bring money to the household and this gives us the freedom to voice our opinions. Those who are unhappy with our new of life: Take it or leave it.").

114. *Id.*

goudin,” where a Haitian marries a person who is either a citizen or has a resident visa in order to become eligible for U.S. residency status; “*mariag bay bous*,” where a Haitian who has resident status returns to Haiti and marries a woman who is interested in migrating and brings her back to the United States; “*mariag rézidens*,” where a Haitian who has resident status marries one who does not; and “*bon mariag*,” where both parties contract the marriage in Haiti and then migrate to the United States and both have resident status.¹¹⁵

There is great potential for inter-generational conflicts for Haitian immigrants. In Haiti, children are not allowed to question parental authority.¹¹⁶ Parents are often accustomed to using physical discipline to control their children’s behavior and American laws targeting child abuse criminalize these acts.¹¹⁷ Moreover, the respect for elders which is prominent in Haitian culture is minimized by the reversal of power structure between parents and children. Children tend to assimilate before parents do because of greater exposure to the host community by attending school.¹¹⁸ Children learn English before the parent and relations are affected by the child’s sophistication and understanding and negotiation the systems and institutions of the host community.¹¹⁹ This reversal can cause great tension in the family, as the parents might feel they are losing control of raising their children. This tension is especially difficult because the identity of Haitian women revolves largely around their roles as a mother.¹²⁰

B. Domestic Violence

The problems of domestic violence in the Haitian culture are not left behind by arriving in the United States. Immigrants, both legal and undocumented, are less likely than all other women to report domestic violence to law enforcement.¹²¹ Battered immigrant women are often silenced by cultural constraints, and are

115. *Id.* at 64 (citing MICHAEL S. LAGUERRE, *AMERICAN ODYSSEY* (1984); STEPICK, *supra* note 96).

116. *Id.*

117. *Id.*; see also V. PUALANI ENOS, FAMILY VIOLENCE PREVENTION FUND, LEARNING FROM THE EXPERIENCES OF BATTERED IMMIGRANT, REFUGEE AND INDIGENOUS WOMEN INVOLVED WITH CHILD PROTECTIVE SERVICES TO INFORM A DIALOGUE AMONG DOMESTIC VIOLENCE ACTIVISTS AND ADVOCATES 51 (2003), available at <http://www.apiahf.org/apidvinstitute/PDF/EnosReport.pdf>.

118. Pierce & Elisme, *supra* note 12, at 64.

119. *Id.*

120. *Id.* at 65.

121. Sarah M. Wood, *Queer Theory, Feminism and the Law: VAWA's Unfinished*

therefore fearful of reporting what is happening in their home. However, Americans should not make the mistake of believing this silence means that Haitian culture supports domestic violence anymore than our own.¹²² The practical constraints to battered immigrant women seeking help begin with language barriers. Illiteracy is also a problem for many immigrants, which makes it difficult for advocates to educate these women about their rights.¹²³

Moreover, Haitian women come from a society where the government refuses to intervene in domestic violence. They have no reason to believe that the U.S. laws are going to be any different. These women may not understand the legal process at a structural level (who should be called, what should be reported, what the sequence of events will be) and at a functional level (where the police station or courthouse is, what the hierarchy of authority is, which forms must be filled out).¹²⁴ Moreover, these women may fear that reporting their husband will result in a loss of status in her community and a loss of identity associated with her relationship with her husband.¹²⁵

The greatest barrier for battered immigrant women to report their abuse is the fear that her immigration status will be compromised.¹²⁶ For these women, the deportation to their home country may cause more fear than continued abuse.¹²⁷ Moreover, these women may fear that they will lose custody of their children through deportation.¹²⁸ While the cultural constraint is difficult to surmount, education and outreach to the Haitian immigrant community would inform these women that they can seek protection from the United States while obtaining lawful permanent residency for themselves and their children. This education should be given in Creole, both in written and oral presentations, in order to educate women who are unable to read. Without knowing their rights, women like Marie could never obtain the help they need.

Business: The Immigrant Women Who Fall Through the Cracks, 11 DUKE J. GENDER L. & POL'Y 141, 142 (2004).

122. See Leti Volpp, *On Culture, Difference, and Domestic Violence*, 11 AM. U. J. GENDER SOC. POL'Y & L. 393, 394 (2003).

123. Wood, *supra* note 121, at 142.

124. *Id.* at 151.

125. *Id.* at 151-152.

126. *Id.* at 152.

127. *Id.*

128. *Id.* at 153.

V. U.S. LEGAL RESPONSE

A. *Developing Competencies for Navigating the U.S. Laws*

Advocates must remember that Haitian women come from an environment that is poor in resources with no traditions of female assertiveness.¹²⁹ Haitian women need advocates to provide information on community resources and identify legal rights and responsibilities. These women might also require education about social and inter-personal relations.¹³⁰ This is especially important in the context of school and government officials.¹³¹ While authority is not usually questioned in Haiti, the tendency to be passive could result in these women not asserting their rights for them and their children.¹³² As Haitian women develop these competencies, they will be more equipped to utilize the laws of the United States and negotiate the system to their advantage.

B. *Violence Against Women Act (VAWA)*

In 1994, Congress passed the Violence Against Women Act (VAWA) to address some of the problems in U.S. immigration law as part of its larger goal of preventing violence against women.¹³³ VAWA 1994 offered protection and benefits for battered immigrant women and children. The statute allowed battered immigrants married to citizens or lawful permanent residents to self-petition for permanent resident status, provided the marriage was entered into in good faith and deportation would result in extreme hardship to the immigrant or her child.¹³⁴ The petitioner must also demonstrate good moral character.¹³⁵ The petitioning woman or her child must have been battered by a spouse who is a U.S. citizen or permanent resident, and the battered immigrant must have resided with the battering spouse.¹³⁶ VAWA 1994 also created

129. Pierce & Elisme, *supra* note 12, at 70.

130. *Id.*

131. *Id.*

132. For example, the passive response could cause Haitian women not to assert their rights in the context of child custody, immigration and domestic violence intervention issues. *See id.*

133. Violence Against Women Act of 1994 (VAWA 1994), Pub. L. No. 103-322, §§ 40001-40703, 108 Stat. 1902 (1994) (codified as amended in scattered sections of 8, 16, 18, 20, 28, and 42 U.S.C.).

134. Petitions for Relatives, Widows and Widowers, and Abused Spouses and Children, 8 C.F.R. § 204.2(c) (2006).

135. *Id.* § 204.2(c)(1)(i)(F).

136. *Id.* § 204.2(c)(D), *cited in* Wood, *supra* note 121, at 146.

a suspension of deportation for battered spouses and children.¹³⁷

In 2000, Congress made amendments to the provisions of VAWA 1994 that related to self-petitioning for battered immigrant women.¹³⁸ These changes were made in Division B of what is known as the Victims of Trafficking and Violence Protection Act.¹³⁹ The amendments (VAWA 2000) were designed to "remedy loopholes and inefficiencies inherent in the original Violence Against Women Act."¹⁴⁰ VAWA 2000 addressed the problem of battered immigrants who were no longer married to their batterers by allowing divorced women and widows to self-petition within two years of divorce or death.¹⁴¹ If the petitioner was divorced, she must demonstrate a connection between the abuse and the termination of the marriage.¹⁴² VAWA 2000 also allowed self-petition by women who married bigamists in good faith, provided that the bigamist spouse is a U.S. citizen.¹⁴³ Moreover, if the battering spouse lost his citizenship or permanent resident status as a result of the abuse, VAWA permits the battered spouse to self-petition.¹⁴⁴

VAWA 2000 attempted to address four major problems with the self-petitioning process. First, the legislation alleviated some of the difficulties associated with the battered immigrant woman's burden of proof. Even though the abuser is still required to have been a United States citizen or lawful permanent resident, a battered immigrant woman is now eligible to self-petition if her bat-

137. VAWA 1994 § 40703 ("[Deportation is to be suspended for any immigrant who] has been physically present in the United States for a continuous period of not less than 3 years immediately preceding the date of such application; has been battered or subjected to extreme cruelty in the United States by a spouse or parent who is a United States citizen or lawful permanent resident (or is the parent of a child of a United States citizen or lawful permanent resident and the child has been battered or subjected to extreme cruelty in the United States by such citizen or permanent resident parent); and proves that during all of such time in the United States the alien was and is a person of good moral character; and is a person whose deportation would, in the opinion of the Attorney General, result in extreme hardship to the alien or the alien's parent or child.").

138. See Victims of Trafficking and Violence Protection Act (VAWA 2000), Pub. L. No. 106-386, §§ 1001-1513, 114 Stat. 1464 (codified as amended in scattered sections of 8 U.S.C.).

139. *Id.*

140. Deanna Kwong, *Removing Barriers for Battered Immigrant Women: A Comparison of Immigrant Protections Under VAWA I & II*, 17 BERKELEY WOMEN'S L.J. 137, 138 (2002).

141. VAWA 2000 § 1503(b)(1)(A).

142. *Id.*

143. *Id.*

144. *Id.*

terer was a United States citizen who died within the past two years or her batterer lost or renounced his immigrant status within the past two years due to an incident "related" to the domestic violence.¹⁴⁵ Second, VAWA 2000 gave battered immigrant women eligibility to self-petition if the legal termination of the marriage within the past two years was "connected" to battering or extreme cruelty by the United States citizen spouse or legal permanent resident.¹⁴⁶ This allows battered women to divorce their abusive spouses without fear that their immigration status will be affected. Third, VAWA 2000 modified the "good moral character" eligibility requirement by allowing a battered immigrant self-petitioner who has never been the primary perpetrator of violence in the relationship, yet who has committed, been arrested for, convicted of, or has pled guilty to committing a crime, to "demonstrate good moral character if she can prove that there was a connection between the crime and the abuse."¹⁴⁷ Fourth, VAWA remedied the "barrier to cancellation of removal by eliminating the application of the stop-time rule to battered immigrant women and children and by allowing a VAWA-eligible battered immigrant spouse or child to file a motion to re-open removal proceedings within one year of the entry of an order of removal."¹⁴⁸ As a result, "absences connected to the battery or extreme cruelty do not destroy the battered immigrant's 'continuous physical presence' in the United States."¹⁴⁹

These reforms greatly expanded the availability of self-petitions for battered immigrant women and their children, but there are still many immigrant women who are not protected. Undocumented women who are battered by husbands who are not U.S. citizens or legal permanent residents still must choose between continued abuse or deportation and possible separation from their children.¹⁵⁰ Immigrant women who are not married to their batterers, but rather are in a *plasaj* relationship like Marie, are also left unprotected by immigration law because VAWA protection depends on marriage to a citizen or lawful permanent resident.¹⁵¹ These gaps in protection are contrary to public policy, VAWA's

145. *Id.*

146. *Id.*

147. Kwong, *supra* note 140, at 148; *see also* VAWA 2000 § 1505(b)(1).

148. Kwong, *supra* note 140, at 149 (citing VAWA 2000 § 1506).

149. *Id.* (citing VAWA 2000 § 1504(a)(2)(B)).

150. Wood, *supra* note 121, at 153.

151. *Id.* at 152.

intent,¹⁵² and basic human rights.

The Violence Against Women Act was reauthorized and amended in 2005, and was signed into law by President George W. Bush in January of 2006 (VAWA 2005).¹⁵³ VAWA 2005 introduces several helpful changes for the self-petitioning process. For example, a K-visa (fiancé) alien may self-petition for permanent resident status if the alien entered into the United States with the intent to enter into a valid marriage and the alien (or the alien's child) was battered or subject to extreme cruelty in the United States by the petitioning citizen, and the petitioner does not have to depart within three months if the marriage does not occur.¹⁵⁴

VAWA 2005 also directs non-governmental immigrant victim advocacy organizations to develop an information pamphlet to ensure the accuracy of information on legal rights and resources for immigrant victims of domestic violence.¹⁵⁵ The pamphlets are required to detail the K-visa and marriage based immigration process; the illegality of domestic violence, sexual assault, and child abuse in the United States; domestic violence and sexual assault services in the United States; legal rights of immigrant victims of abuse and other crimes in immigration, criminal justice, and family law; obligations of parents to provide child support for children; illegality of and penalties for knowingly entering into false immigration marriages; and a warning concerning the potential use of K-visas by persons with a history of domestic violence.¹⁵⁶ However, the provision does not require that the pamphlet be translated into Creole,¹⁵⁷ thereby limiting its helpfulness to Haitian women.

One amendment introduced by VAWA 2005 could prove especially helpful to Haitian women who are married to spouses who are not U.S. citizens or lawful permanent residents. The legislation amended the Haitian Refugee Immigration Fairness Act of 1998 to permit the alien spouse or child of a Haitian alien who is or was eligible for permanent resident status to self-petition for permanent resident status.¹⁵⁸ However, although this amendment

152. See VAWA 2000 § 1502(a)(1) ("[T]he goal of the immigration protections for battered immigrants included in the Violence Against Women Act of 1994 was to remove immigration laws as a barrier that kept battered immigrant women and children locked in abusive relationships."), *quoted in* Wood, *supra* note 121, at 147.

153. See Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, §§ 1-1199, 119 Stat. 2960 (2005).

154. See *id.* § 833(a)(2)(A).

155. See *id.* § 833(a)(2).

156. *Id.*

157. See *id.*

158. *Id.* § 811.

greatly increases the numbers of Haitian women who are eligible to self-petition, the expansion of protection is only helpful if these women are informed about their rights. Therefore, the 2006 VAWA amendments fall short of providing complete relief to Haitian victims of domestic violence.

VI. CONCLUSION

Violence against women permeates Haitian culture and society. Due to the political, cultural and socio-economic conditions in Haiti, it is unlikely that Haitian women will seek protection and relief from their government in the near future. The problem of domestic violence does not disappear for Haitian women who immigrate to America. Although VAWA 1994 and 2000 offer substantial relief for some battered immigrant women, the gaps in protection leave many battered Haitian women physically vulnerable and legally defenseless. Unfortunately, VAWA 2005 has not cured many of these deficiencies. The law should not force women to choose between their safety and that of their children. In order to address these inequities, VAWA should once again be amended to translate women's rights pamphlets into Creole and offer protection for those women who are not married to their battering partners and for those women who are married to spouses who are not citizens or permanent residents.